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TECHNOLOGY CENTER 2100

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In re Application of: ALLIBHOY, N. et. al.. )  
Application No. 10/788,559 )  
Filed: February 26, 2004 )  
Attorney Docket No.: PU050096 )  
Title of Invention: METHOD AND SYSTEM )  
FOR CONTROLLING AND AUDITING )  
CONTENT /SERVICES SYSTEMS )

**DECISION ON PETITION  
UNDER 37 CFR § 1.181**

This is a decision on the petition, filed January 14, 2009, under 37 C.F.R. § 1.181(a) to invoke Supervisory Authority of the Commissioner and require the Examiner to withdraw the Final rejection mailed July 22, 2008. Petitioner also seeks response to the arguments enclosed with this petition and indication of the status of claim 16.

This petition is hereby **GRANTED**.

**RELEVANT HISTORY**

06/28/06 Final office action mailed 6/28/06 in response to filing of application.

07/13/07 Notice of abandonment for failure to reply of action mailed 06/28/06.

09/19/07 After-final amendment in response to action mailed 06/28/06, the response including amendment to the specification, remarks/arguments and replacement drawings. Additionally, a Petition to revive is filed including an RCE is filed. The RCE request previously submitted amendment filed be considered as submission.

02/20/08 Advisory Action in response to petition to revive and RCE was mailed.

07/22/08 Final action in response to petition to revive and RCE is mailed after petition was granted on 4/14/08..

01/14/09 Amendment after-final including amendment to the specification and

remarks/arguments is filed. Additionally, a Petition for review by the Technology Center SPRE is filed.

### **RULES AND REGULATIONS**

**MPEP §706.07 Final Rejection:** 37 CFR §1.113 Final rejection or action.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, *clearly stating the reasons in support thereof*. (c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, *the reply to a final rejection or action must comply with any requirements or objections as to form*.

### **STATEMENT OF GROUNDS**

In making the final rejection, all outstanding grounds of rejection of record should be carefully reviewed, and any such grounds relied on in the final rejection should be reiterated. They must also be clearly developed to such an extent that applicant may readily judge the advisability of an appeal unless a single previous Office action contains a complete statement supporting the rejection. However, where a single previous Office action contains a complete statement of a ground of rejection, *the final rejection may refer to such a statement and also should include a rebuttal of any arguments raised in the applicant's reply*. If appeal is taken in such a case, the examiner's answer should contain a complete statement of the examiner's position.

### **MPEP §706.07(b) Final Rejection, When Proper on First Action**

The claims of a new application may be finally rejected in the first Office action in those situations where (A) *the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application*.

The claims of an application for which a request for continued examination (RCE) has been filed may be finally rejected in the action immediately subsequent to the filing of the RCE (with a submission and fee under 37 CFR 1.114) *where all the claims in the application after the entry of the submission under 37 CFR 1.114 (A) are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114, and (B) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to the filing of the RCE under 37 CFR 1.114*.

### **706.07(d) Final Rejection, Withdrawal of, Premature**

If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection. The finality of the Office action must be withdrawn while the application is still pending. The examiner cannot withdraw the final rejection once the application is abandoned. Once the finality of the Office action has been withdrawn, the next Office action may be made final if the conditions set forth in MPEP § 706.07(a) are met.

### **DECISION**

According to the cited portions above, in making final rejections, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, *clearly stating the reasons in support thereof*. In this case, final rejections mailed 6/28/06 and 7/22/08 clearly state all grounds of rejection applicable to the claims in the application, including claim 16 which appear to be rejected as being anticipated by Wolfe et. al. according to the grounds of rejection statement addressing claims 1-33 in the office action and the disposition of claims section item 6 which shows the status of the claims (1-33) as being rejected.

However, these office actions clearly fail to state the reasons in support of the rejection with respect to claim 16. Thus, the rejections are not clearly developed to such an extent that applicant may readily judge the advisability of an appeal unless a single previous Office action contains a complete statement supporting the rejection, as required according to the above cited portion of the MPEP. The finality of office action mailed 7/22/08 is hereby **withdrawn**.

For the reasons stated above, this petition is **GRANTED**.

Advisory Action mailed 2/20/08 was in response After-final amendment filed 09/19/07 including amendment to the specification, remarks/arguments and replacement drawings.

Once the finality of the Office action has been withdrawn, the next Office action may be made final if the conditions set forth in MPEP § 706.07(a) are met (see MPEP §706.07(d)).

Application will be forwarded to examiner for proper treatment of applicant's response mailed 9/19/07 and arguments/remarks presented on 1/14/09 and new office action will be mailed in due course.

Furthermore, since the petition under 37 CFR § 1.181 requires no fee, Petitioner's Deposit Account No. 07-0832 will be credited \$400.00 for the petition fee under 37 CFR § 1.182 paid on January 14, 2009.

/bp/

/Beatriz Prieto/

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02/26/2004

Nizar Allibhoy

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EXAMINER

EL CHANTI, HUSSEIN A

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MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.